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the question of actual bias.⁹ Neither at common law nor under the code is any substantial right of the defendant impaired by a refusal to permit the "tedious examination of jurors apparently with no definite purpose or object in view, but with the hope of eliciting something indicating the advisability of a peremptory challenge." The English practice of challenging before examination might also be conducive to expedition. In one case the judge of the trial court employed this method. The Appellate Court refused to determine whether the course adopted was error or not, as no objection was taken by the defendant at the trial.¹⁰

A. M. K.

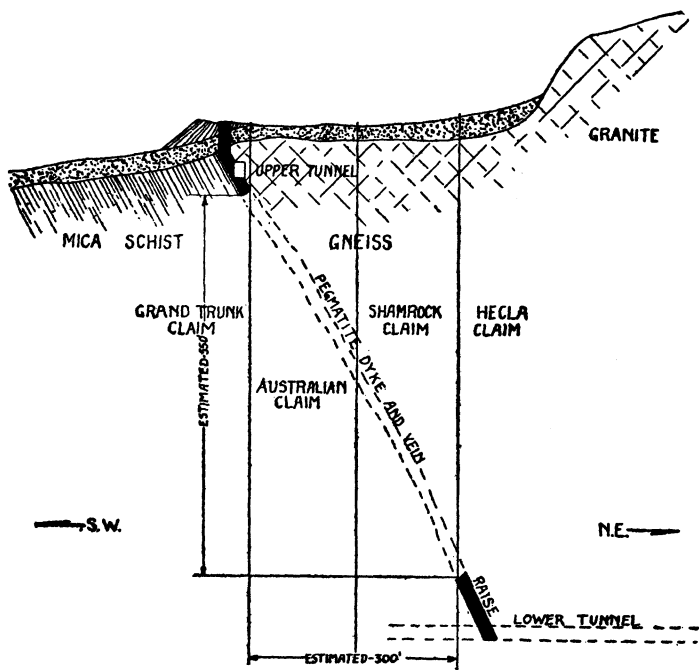
Mining Law — Extralateral Right — Proof of Vein Continuity — The general presumption that the owner of a tract of land owns everything vertically beneath his surface applies to mining property as well. To rebut this presumption, one who invades another's location on the theory that he is entitled to follow his vein extralaterally, must prove that the vein he desires to follow therein apexes on his own claim.¹ The recent case of *Collins v. Bailey* (Colo.), 125 Pac. 543, reaffirms this rule. The defendant had followed a vein apexing in his location for about 50 feet on its dip. He then went beyond the two claims of the plaintiff, Collins, which lay adjacent and parallel to his own, and overlying the dip of the vein, and drove a tunnel beneath the plaintiff's surface, discovering a vein thereunder at considerable depth which he began to work upward. He maintained that this was the same vein which apexed in his claim, and to prove his contention produced a map constructed by engineers, which showed both veins to be one and the same although approximately 675 feet of unexplored earth lay between the two segments. The trial court allowed the jury to consider this evidence, together with other evidence regarding the dip of the veins and the mineral character of the walls, and gave the following instruction to the jury: "The jury are instructed that in determining whether a vein is continuous in its downward course, it is not necessary that the vein should be opened up or disclosed for the entire distance, but you must take into consideration all the facts shown as to the dip or incline of the vein, its geological and mineral character and of the walls, and from the whole evidence decide whether

⁹ Cal. Penal Code, Secs. 1055-1088 inc.

¹⁰ *People v. Trask*, *supra*.

¹ *Leadville Mining Co. v. Fitzgerald* (1879), 15 Fed. Cases. 8158; *Cheeseman v. Shreve* (1889), 40 Fed. 787; *Stevens v. Williams* (1879), 23 Fed. Cases 13413; *Wyoming Gold Mining Co. v. Champion Mining Co.* (1894), 63 Fed. 540, 550; *Heinze et al. v. Boston and Montana Consolidated Copper Mining Co.* (1904), 30 Mont. 484, 77 Pac. 421; *Butte & B. M. Co. v. Societe Anonyme des Mines* (1889), 23 Mont. 177, 58 Pac. 110; *Iron Silver Mining Co. v. Cheeseman* (1885), 116 U. S. 529.

it is the same vein in fact." A verdict for the defendant was reversed by the Appellate Court on the ground that this evidence and instruction were misleading and gave the jury the right to speculate and conjecture as to the dip and continuity of the vein.



This illustration is a vertical section at right angles to the length of the claims involved. The solid black portion of the illustration represents actual vein disclosures, while the dotted lines labeled "Pegmatite Dyke and Vein" represent the unexplored vein projection.

Obviously, it is impossible to lay down any rule regarding the extent of the development necessary to prove continuity. The precise nature and extent of the vein exposure required will vary with the conditions of each particular case. The general trend of the decisions would seem to require practically continuous exposures on the vein itself and any considerable interruptions will not be countenanced.² Courts are usually liberal in allowing litigants ample time to complete litigation work necessary to establish continuity and vein identity.

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² Keely v. Ophir Hill Consolidated Mining Co. (1909), 169 Fed. 601, 603: "It is a notorious fact that there is no way to prove the ex-

Mining Law: Time of the Essence: Laches.—The case of *Gamble v. Hanchett*,¹ involving the famous Silver Peak Mines, reannounces a rule peculiarly applicable to mining property. A person who does not assert his claim arising out of an option to certain property, until after it has been demonstrated to be immensely valuable by reason of the efforts of others claiming under the same option, was declared to have forfeited his rights. As the court said, "The doctrine of laches is particularly applicable to mining law."

Ordinarily, time is not of the essence of a contract, even in the case of a sale of land, unless there is a specific stipulation to that effect in the contract itself.² But time may become of the essence by implication from the nature of the property.³ If it is liable to fluctuations in value, or has a value in its nature speculative, such an implication may be made.⁴ Mining claims are typical of such property, being subject to just such sudden and speculative changes of value. "They are not only subject to great and sudden fluctuations in value, but it is impossible to tell, even after careful examination by experts, whether they will prove valuable or not."⁵ Indeed, in the case of mining property, the fluctuations are so violent, sudden and so incapable of prediction that in every contract for the lease or sale of mining claims, time has long been considered as of the essence.⁶

Many years prior to the inception of modern mining law in the United States, the English Chancery Courts applied the doctrine of laches very strictly in cases involving the transfer of rights to mining property.⁷ *Prendergast v. Turton* is remarkably similar to several cases in our courts.⁸ To protect his rights, a claimant to mining property must exercise diligence in asserting such rights.

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istence of a vein at any particular place except by actually following and developing a known vein to that place or digging into the bowels of the earth and locating it there."

¹ 126 Pac. 111, 135 (Nevada) (1912). See also *Champion Gold Mining Co. v. Champion Mines Co.*, 44 Cal. Dec. 606 (Nov. 20, 1912), and *Cassidy v. Silver King Coalition Mines Co.*, 199 Fed. 100 (Aug. 15, 1912).

² *Brown v. Covillaud*, 10 Cal. 317 (1856); *Bennet v. Hyde*, 92 Cal. 131 (1892); *Miller v. Cox*, 96 Cal. 339 (1892).

³ *Taylor v. Longworth*, 14 Peters, 170 (1840); *Settle v. Winters*, 10 Pac. 216 (Idaho), (1886); *Idaho Gold Mining Co. v. Union Mining Co.*, 47 Pac. 95 (Idaho), (1896).

⁴ *City of London v. Mitford*, 14 Ves. 41 (1807); *Doleret v. Rothchild*, 1 Sim. & St. 590 (1824); *Waterman v. Banks*, 144 U. S. 394 (1892); *Standiford v. Thompson*, 135 Fed. 991 (1905).

⁵ *Gaines v. Chew*, 167 Fed. 630 (1909).

⁶ *Williams v. Long*, 139 Cal. 186 (1903); *Green Ridge Fuel Co. v. Littlejohn*, 119 N. W. 698 (Iowa), (1909).

⁷ *Parker v. Frith*, 1 Sim. & St. 200 (1819); *Prendergast v. Turton*, 1 Y. & C. 110 (1841); *Alloway v. Braine*, 26 Beav. 574 (1859).

⁸ *Twin Lick Oil Co. v. Marbury*, 91 U. S. 587 (1875); *Johnson v. Standard Mining Co.*, 148 U. S. 360 (1893); *Patterson v. Hewitt*, 195 U. S. 309 (1904).